

THE HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

AARON HARRIS, individually,
Plaintiff,

v.

NATIONAL RAILROAD PASSENGER
CORPORATION d/b/a AMTRAK,

Defendant.

Case No. 2:18-cv-00134-BHS

PLAINTIFFS' TRIAL BRIEF

DALE SKYLLINGSTAD, individually,
Plaintiff,

v.

NATIONAL RAILROAD PASSENGER
CORPORATION d/b/a AMTRAK,

Defendant.

Case No. 2:18-cv-00648-BHS

BLAINE WILMOTTE and MADISON
WILMOTTE, individually,

Plaintiffs,

v.

NATIONAL RAILROAD PASSENGER
CORPORATION d/b/a AMTRAK,
Defendant.

Case No. 2:18-cv-00086-BHS

PLAINTIFFS' TRIAL BRIEF - 1

Case No. 2:18-cv-00134-BHS

Case No. 2:18-cv-00648-BHS

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I. PARTIES

Plaintiffs Aaron Harris, Dale Skyllingstad, Blaine Wilmotte and Madison Wilmotte, have brought these cases for personal injuries against Defendant National Railroad Passenger Corporation d/b/a Amtrak. Plaintiffs Aaron Harris and Dale Skyllingstad have also brought claims under the Washington Consumer Protection Act against Defendant Amtrak. The cases were filed separately and consolidated for trial.

Plaintiffs are represented by David Beninger, Patricia Anderson and Andrew Hoyal of the Luvera Law Firm in Seattle, and Sean Driscoll and Kristofer Riddle of the Clifford Law Firm in Chicago, Illinois. Amtrak is represented by Tim Wackerbarth and Andrew Yates of Lane Powell P.C. and Mark Landman of New York.

II. GENERAL NATURE OF CASE

This case arises out of the commercial operations of Amtrak Cascades Train 501 that resulted in a derailment at nearly 80 miles per hour in a curve restricted to less than 30 mph while the train was traveling southbound near DuPont, Washington. Plaintiffs Aaron Harris and Dale Skyllingstad were commercial passengers on the Amtrak train who suffered serious injuries in the derailment. Plaintiff Blaine Wilmotte was seriously injured when one of the derailed railroad cars left the overpass and landed on I-5 on top of a truck in which Blaine was a passenger. Madison Wilmotte is the wife of Blaine Wilmotte.

III. SUMMARY OF CLAIMS

Plaintiffs claim that Amtrak is guilty of common law negligence, including the violation of federal statutes and regulations. Plaintiffs also contend that Amtrak is liable as a common carrier. Plaintiffs Aaron Harris, Dale Skyllingstad, and Blaine Wilmotte are seeking damages for personal injuries they suffered as a result of the derailment. Plaintiff Madison Wilmotte is seeking damages for loss of consortium.

1 Plaintiffs Aaron Harris and Dale Skyllingstad also claim that Amtrak acted unfairly and
2 deceptively by omitting key, material facts about the inaugural commercial operations and are
3 pursuing claims against Amtrak under Washington's Consumer Protection Act (CPA), RCW 19.86
4 *et seq.*

5 The evidence and issues regarding liability and Plaintiffs' CPA claim are generally set out
6 in the Motions for Summary Judgment, Responses to Summary Judgment and the Reply's filed
7 by the respective parties.

8 An issue before the Court in this trial will be to what extent are Plaintiffs permitted to offer
9 liability evidence to establish that Defendant acted unfairly or deceptively pursuant to the CPA. It
10 is clear that the FAST Act was a safety regulation that grew out of a real-life tragedy involving an
11 Amtrak overspeed derailment going into a curve because the engineer lost situation awareness and
12 there was no redundant safety protection. The FAST Act requirements went into effect in
13 December 2015.

14 Amtrak's failed to implement the FAST Act when it initiated service on December 18,
15 2017, knowing that there was a 49 m.p.h. permanent speed reduction at Milepost 19.8 to which
16 the FAST Act applied; Amtrak had a duty under the CPA to disclose this and other material
17 information to passengers. Although the CPA does not impose an independent duty to comply
18 with the FAST Act, it does impose a duty on Amtrak to inform the passengers of its non-
19 compliance before it engaged in sales, marketing and commercial transactions with passengers
20 buying tickets for Amtrak 501.

21 Similarly, an issue before the Court in this trial will be to what extent Plaintiffs are
22 permitted to offer evidence regarding how Amtrak Cascades Train 501 derailed in relation to the
23 individual Plaintiffs' damage claims. The evidence will establish that Plaintiffs Aaron Harris, Dale
24

1 Skyllingstad, and Blaine Wilmotte all sustained physical and emotional injuries as a result of the
2 derailment. *Murray v. Mossman*, 52 Wn.2d 885, 888 (1958) held that even where the only issue
3 contested is the amount of damages—not the case here—the trial court has discretion in admitting
4 evidence on the manner in which the accident occurred as that evidence is relevant to damages.

5 In regard to damages, Defendant Amtrak has stated that it will not contest liability for
6 negligence and the compensatory damages proximately caused by the derailment of Amtrak
7 Cascades Train 501 on December 18, 2017. Defendants are contesting the nature and extent of
8 Plaintiffs injuries, liability under the CPA and the amount of damages.

9 **IV. ISSUES IN DISPUTE**

10 1. Amtrak claims that it has paid all past medical bills and expenses of Plaintiffs
11 Harris, Wilmotte, and Skyllingstad. However, Amtrak has failed to produce any evidence that
12 they have paid the all the medical bills for all of Plaintiffs.

13 2. It is anticipated that Defendant will object to the testimony of Plaintiffs' liability
14 experts. Plaintiffs experts are streamlined given the recent summary judgment, but offer relevant
15 testimony as to Plaintiffs Harris' and Skyllingstad's claims pursuant to the CPA. There is also
16 foundational testimony, if required, for a brief animation that depicts how Amtrak Cascades Train
17 501 derailed and came to rest. Such evidence is relevant to all three Plaintiffs' personal injury
18 claims. It is anticipated that Defendants will object to any liability experts. However, it must be
19 noted that Amtrak has not filed a motion to limit the testimony of any of the experts other than Mr.
20 Hayes. Rather, Amtrak has simply filed Defendant Motions *in limine* No. 1, 2, 4, and 8, Dkt. 49,
21 seeking to limit the introduction of any liability evidence, which would not be proper given the
22 remaining injury and CPA claims.

V. CONCLUSION

The evidence will show that Amtrak acted unfairly or deceptively pursuant to Washington's Consumer Protection Act, RCW 19.86 *et seq.* The evidence will also show that Plaintiffs Aaron Harris, Dale Skyllingstad, and Blaine Wilmotte sustained significant personal injuries as a result of the derailment.

DATED this 15th day of August, 2019.

LUVERA LAW FIRM

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CERTIFICATE OF SERVICE

I hereby certify that on the below date I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 15th day of August, 2019, at Seattle, Washington.

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